

[Vogel v. Florida Power Corp.](#), 90-ERA-49 (ALJ Jan. 8, 1991)

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DATE: January 8, 1991  
CASE NO.: 90-ERA-49

IN THE MATTER OF

ROBERT W. VOGEL,  
COMPLAINANT,

v.

FLORIDA POWER CORPORATION, AND  
FLOUR CONSTRUCTORS, INC.  
RESPONDENTS.

RECOMMENDED DECISION AND ORDER ACCEPTING  
THE PARTIES SETTLEMENT AGREEMENT AND DISMISSAL  
OF THE COMPLAINT WITH PREJUDICE

This case came to trial on December 12, 1990 in Tampa, Florida. At the trial's outset, the parties advised the court that, "the parties have reached a full settlement of all matters in controversy . . ." (TR 4 & 5).<sup>1</sup>

The terms of said agreement, in brief, are as follows:

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1. The particulars of the settlement agreement would remain confidential as between the parties;

2. It would be submitted in writing to the court and forwarded to the Secretary of Labor under seal;

3. The Complainant would accept the findings of the Wage and Hour Division;

4. The confidentiality of said agreement would not pertain to any investigation being conducted by the Nuclear Regulatory Commission;

5. If the Secretary of Labor decides not to keep the agreement under seal, the agreement will not be disturbed. (*See* TR 5-8).

After the settlement agreement, as recited above, was announced in court, the parties made an offer of proof. The parties, through counsel, made statements as to what they expected to prove if trial had gone forward. The purpose of this exercise was to assist the court and the Secretary of Labor in deciding whether to accept the settlement agreement.

Having heard the offer of proof, and having read the settlement agreement itself, which I shall place under seal and forward to the Secretary of Labor as per the wishes of the parties, I am satisfied that its terms are fair, adequate and reasonable. I note that after tests were conducted, it was determined that at no time did contamination take place. (TR 25, 34), that even in the Claimant's mind, the person responsible for laying him off would not engage in illegal conduct to effect the lay off (TR 54-60) and, finally, any damages, if any, claimant may have had through the course of his employment were readily ascertainable and adequately provided for by the respondents herein. (TR 33, 34).

I hereby recommend to the Secretary of Labor that the settlement agreement entered into by the parties be accepted. The agreement, which I attach hereto, under seal, provides for, among other things, that it, "shall not be construed to limit in any manner the right of Vogel, Florida Power, or Flour to communicate with Nuclear Regulatory Commission (NRC) concerning the safe operation of Florida Power's nuclear plant at Crystal River, Florida, or to participate as a witness or otherwise in any

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proceeding before the NRC or related to the safe operation of the plant." (Agreement, p. 4).

MICHAEL P. LESNIAK  
Administrative Law Judge

MPL/lkw

#### [ENDNOTES]

<sup>1</sup>The following citation to the record is used herein:

TR - Transcript of Hearing on December 12, 1990.